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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION
14

15 MELVIN SALVESON *et al.*,
16 Plaintiffs,
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18 v.
19 JP MORGAN CHASE & CO. *et al.*,
20 Defendants.
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Case No. 4:13-cv-05816-SBA

CLASS ACTION

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF THEIR MOTION TO DISMISS
COMPLAINT**

Hon. Sandra Brown Armstrong

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REQUEST FOR JUDICIAL NOTICE

Defendants have moved to dismiss the Complaint because, among other threshold deficiencies, the cardholder Plaintiffs lack standing to bring the claims asserted in the Complaint, which simply mirror the claims asserted by merchants in the ongoing multidistrict litigation styled as *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-MD-1720 (JG)(JO)(E.D.N.Y.) (the “*Interchange MDL*”). (See Memorandum in Support of Defendants’ Motion to Dismiss (“Opening Brief”).)

In support of their motion to dismiss, Defendants request judicial notice of one document: the Second Consolidated Amended Class Action Complaint, *Interchange MDL*, No. 05-MD-1720 (E.D.N.Y. Feb. 20, 2009) (ECF No. 1153), a copy of which is attached as Exhibit A to the accompanying Declaration of Jeffrey Rosenberg, dated March 28, 2014. Defendants do not offer the *Interchange MDL* complaint to prove the truth of any of the allegations therein—Defendants vigorously deny those allegations—but simply to demonstrate the presence of allegations in the *Interchange MDL* that are indistinguishable from the Complaint in this case with respect to the alleged anticompetitive conduct.

Court filings such as the *Interchange MDL* complaint are routinely the subject of judicial notice pursuant to Federal Rule of Evidence 201 because they are matters of public record capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Defendants’ request for judicial notice should therefore be granted.

ARGUMENT

I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE *INTERCHANGE MDL* COMPLAINT IN CONNECTION WITH DEFENDANTS’ MOTION TO DISMISS.

On a motion to dismiss, the court properly considers documents subject to judicial notice. *See, e.g., Roberts v. Bartels*, No. C 12-06119 SBA, 2013 WL 6173360, at *3-4 (N.D. Cal. Nov. 25, 2013) (Armstrong, J.) (taking judicial notice of a complaint to resolve a motion to dismiss); *Smith v. Kohlweiss, Inc.*, No. C 11-00239 SBA, 2012 WL 1156338, at *2, 3 (N.D. Cal. Mar. 30, 2012) (Armstrong, J.) (taking judicial notice of pleadings and orders to resolve motion to

dismiss).

Federal Rule of Evidence 201 authorizes a court to take judicial notice of facts that are “not subject to reasonable dispute” and are either “(1) [] generally known within the trial court’s territorial jurisdiction; or (2) [capable of accurate and ready determination] from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Judicial notice is “mandatory” if it is “[requested by a party] and the court is supplied with the necessary information.” Fed. R. Evid. 201(c).

Requests for judicial notice of court filings such as the *Interchange MDL* complaint meet this standard. *See Roberts*, 2013 WL 6173360, at *3; *Smith*, 2012 WL 1156338, at *2-3; *Brooks v. Gomez*, No. C 10-01873 SBA, 2013 WL 496339, at *4 (N.D. Cal. Feb. 7, 2013) (Armstrong, J.) (taking judicial notice of filed pleadings on a motion to dismiss because their existence and contents are “not subject to reasonable dispute...[they] can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”).¹

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court grant Defendants’ request for judicial notice of the complaint in the *Interchange MDL*.

¹ *See also, e.g., Wheeler v. City of Oakland*, No. C 05-0647 SBA, 2006 WL 1140992, at *5 (N.D. Cal. Apr. 28, 2006) (Armstrong, J.) (“Court filings and orders are the type of documents that are properly noticed under Rule 201”); *Banga v. Experian Info. Solutions, Inc.*, No. C 09-04867 SBA, 2013 WL 5539690, at *3 (N.D. Cal. Sept. 30, 2013) (Armstrong, J.) (“A court may take judicial notice of court filings and other matters of public record.” (citing *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of the briefing and transcript of the *Wal-Mart* settlement hearings involving defendants and class of merchants))).

1 Dated: March 28, 2014

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ECF ATTESTATION

I, Mark P. Ladner, am the ECF User whose ID and Password are being used to file this:

**DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR
MOTION TO DISMISS COMPLAINT**

In compliance with Civil L.R. 5-1(i)(3), I hereby attest that Timothy A. Miller, Matt Powers, and David Lesser concurred in this filing.

Dated: March 28, 2014

MORRISON & FOERSTER LLP

By: /s/ Mark P. Ladner
Mark P. Ladner